

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A23-0138**

Pioneer Apartments LLLP,  
Respondent,

vs.

Erica Shannon,  
Appellant,

John Doe, Jane Doe,  
Defendants.

**Filed October 9, 2023  
Affirmed  
Connolly, Judge**

Ramsey County District Court  
File No. 19AV-VB-22-9842

Clarice Scarnecchia, Patrick Flynn, Landlord Resource Network, LLC, Minneapolis,  
Minnesota (for respondent)

Erica Shannon, St. Paul, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and  
Hooten, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal in this eviction action, appellant, a tenant, challenges the district court's order cancelling her trial for failure to deposit undisputed rent owed to respondent, a landlord, with the court and entering judgment in favor of respondent. Appellant argues that the district court erred by (1) conditioning her trial on the escrow deposit, (2) continuing the trial, and (3) denying her motion for a stay pending appeal. We affirm.

### FACTS

Appellant Erica Shannon rented an apartment from respondent Pioneer Apartments LLLP for \$1,125 a month. In October 2022, respondent filed an eviction action against appellant for nonpayment of rent from August 2022 to October 2022 (the disputed rent). In November 2022, both parties appeared before the district court. Appellant denied owing rent from August 2022 to October 2022, arguing that it was covered by her monthly rent assistance and that she had proof that “every single [monthly rent] payment was on time”; however, she admitted that she had not paid rent for November 2022 (part of the undisputed rent).

The district court informed appellant that it would not hear evidence on the merits of the claim, scheduled trial for December 12, 2022, and directed appellant to escrow \$2,250<sup>1</sup> rent with the court no later than November 18, 2022, for the case to proceed to

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<sup>1</sup> The district court and the parties refer to certain disputed and undisputed rent. The *disputed* rent represents the amount appellant claims was already paid to respondent, with the help of rent assistance programs, and therefore, appellant disputes respondent's allegation that she has not *paid* the rent. She does not dispute that she has a monthly

trial. Appellant did not object. On November 22, 2022, the district court issued an order canceling the trial because appellant had failed to deposit the rent with the court and entered judgment in favor of respondent for recovery of the premises.

Appellant filed appeal papers indicating that she intended to argue that the rent was not owed. The district court had not reached the merits of that issue because appellant did not pay the disputed rent into court as directed. And there was no indication in the record that appellant had argued to the district court that the escrow order was improper. This court dismissed the earlier appeal because appellant had not preserved any issues for appeal. We remanded the matter to the district court for reconsideration of the escrow requirement in light of Minn. R. Gen. Prac. 608. *Pioneer Apartments LLLP v. Shannon*, No. A22-1700 (Minn. App. Dec. 20, 2022) (order). On remand, the district court vacated the earlier judgment and quashed the writ.

At a subsequent hearing, it was established that appellant had not yet paid respondent the November 2022 and December 2022 undisputed rent. The district court filed an order on January 5, 2023, scheduling trial for January 30, 2023, citing to Minn. R.

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obligation to pay respondent rent. This *disputed* rent applies to the months of August 2022 to October 2022. The *undisputed* rent is that which appellant admits is owing and that she admits she has not paid. A tenant may have a defense as to why he or she did not pay the undisputed rent. For example, the tenant may be withholding rent because a landlord has violated a covenant of habitability. This undisputed rent applies to the months of November 2022 and December 2022.

Gen. Prac. 608, and conditioning the trial on an escrow deposit for the November 2022, December 2022, and January 2023 rent, all of which was undisputed and unpaid.

On January 12, 2023, appellant filed a motion to amend or review the district court's January escrow order and requested that the court accept a partial escrow payment to proceed to trial. The district court denied the motion. Because appellant failed to deposit the required escrow amount, the district court canceled the trial and entered judgment in favor of respondent for recovery of the premises. This appeal followed.

Appellant sought a stay pending appeal, which the district court denied. Appellant sought review of the denial in this court, arguing that she is entitled to a stay because (1) she has a defense on the merits, (2) the district court was required to accept her partial escrow payment, and (3) the escrow order was improper. This court denied the motion, finding no authority supporting appellant's argument that a stay is warranted when an appellant has a defense on the merits or when an appellant had attempted to make a partial escrow payment. *Pioneer Apartments LLLP v. Shannon*, No. A23-0138, 2023 WL 2662570, at \*1 (Minn. App. Feb. 21, 2023).

This court explained that stays pending appeal in eviction actions are governed by Minn. Stat. § 504B.371, subd. 3 (2022), which requires a tenant remaining in possession to provide a bond that ensures, among other things, that all rent and damages owed during the appeal would be paid. *Id.* at \*2. Because appellant had informed the district court that she was unable to deposit rent, we concluded that the district court did not err by denying appellant's motion for a stay pending appeal. *Id.* Our order further noted that appellant's

merits argument about the escrow requirement was not properly before this court through motion practice. *Id.*

Appellant argues that the district court improperly (1) ordered appellant to escrow undisputed and unpaid rent as a condition for a trial to proceed, (2) abused its discretion in denying appellant the opportunity to present evidence on the merits at the initial hearing instead of continuing the matter and scheduling trial, and (3) abused its discretion in denying appellant’s motion to stay the writ for recovery of the premises pending appeal.<sup>2</sup>

### DECISION

An eviction action is a summary proceeding to determine the present possessory right to property. *See Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445-46 (Minn. App. 2001). A landlord may bring an eviction action against a tenant for nonpayment of rent. Minn. Stat. § 504B.291 (2022). When this court reviews housing court decisions, “[t]he findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.” Minn. R. Civ. P. 52.01.

We review appeals from eviction actions to determine “whether the district court’s findings of fact are clearly erroneous.” *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003). A factual finding is clearly erroneous if there is a “clear

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<sup>2</sup> Appellant also asks this court to conclude that she paid the disputed rent owed, award her damages for pain and suffering, and impose sanctions on respondent’s attorney. The merits of appellant’s claim were not decided by the district court, and the claims for damages and sanctions are being raised for the first time on appeal. This court generally must only consider the issues that the record shows were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Accordingly, these arguments are not properly before us.

demonstration that it is without substantial evidentiary support or that it was induced by an erroneous view of the law.” *Schuett Inv. Co. v. Anderson*, 386 N.W.2d 249, 252 (Minn. App. 1986) (quotation omitted). We review a district court’s conclusions of law de novo. *W. Insulation Servs. v. Cent. Nat’l Ins. Co. of Omaha*, 460 N.W.2d 355, 357 (Minn. App. 1990). “When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *In re Est. of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015).

**I. The district court did not abuse its discretion by ordering appellant to escrow unpaid undisputed rent as a condition of proceeding to trial.**

Minn. R. Gen. Prac. 608 gives district courts discretion to order a tenant who *withholds rent in reliance on a defense* to deposit with the court an amount “equal to the rent due as the same accrues *or* such other amount as determined by the court to be appropriate as security for the plaintiff, given the circumstances of the case.” (emphasis added). The district court ordered appellant to escrow the undisputed and unpaid November 2022, December 2022, and January 2023 rent as a condition for a trial and cancelled appellant’s trial because she failed to escrow the rent. Appellant argues that the district court abused its discretion in conditioning her trial on the deposit of November 2022 and December 2022 rent into escrow because she did not withhold rent in reliance on

a defense, which is required for rule 608 to apply. Appellant also argues that the district court's cancellation of her trial for failure to escrow the payment was in error. We disagree.

Under Minnesota law, “[a] landlord may bring an eviction action for nonpayment of rent.” Minn. Stat. § 504B.291, subd. 1(a). The person entitled to the premises may recover possession when “any rent becomes due according to the terms of such lease or agreement.” Minn. Stat. § 504B.285, subd. 1(a)(2) (2022). A tenant is entitled to a trial when material facts are in dispute. *NY Props., LLC v. Schuette*, 977 N.W.2d 862, 863 (Minn. 2022).

A district court's order that a tenant relying on the defense that the landlord breached the covenants of habitability was required to deposit the disputed rent into court was upheld in *Fritz v. Warthen*, 213 N.W.2d 339, 341 (Minn. 1973). When a district court finds “a fact question exists as to the breach of the covenants of habitability, that court will order the tenant to pay the rent to be withheld from the landlord into court,” including any future rent withheld during the pendency of the case. *Id.*

Here, appellant argues that she does not owe respondent rent for August 2022 to October 2022 because that rent was paid for by a rent assistance program. But she admitted that she had not paid November and December 2022 rent. Therefore, the district court explained that, although it could not require an escrow payment for the past *disputed* rent, it could order escrow of the November 2022 and December 2022 rent, because it is undisputed that those months are due and owing. Thus, the district court did not abuse its discretion in determining that, because appellant conceded that rent was not paid for November and December 2022, the only reason to go to trial would be to present a defense to nonpayment, such as, breach of the covenants of habitability.

Respondent also argues that, although the January 2023 rent had not come due at the time of the December 29, 2022 hearing, the district court still had discretion to order that rent be paid into escrow because rule 608 allows “the court to order rent be paid . . . as rent continues to accrue.” We agree. Rule 608 also requires a deposit of rent for “such other amount as determined by the court to be appropriate as security for the plaintiff, given the circumstances of the case.” Minn. R. Gen. Prac. 608.

On the record before us, the district court did not abuse its discretion in requiring appellant to escrow rent for November 2022 through January 2023 or in canceling her trial when she failed to do so.

**II. The district court did not abuse its discretion in denying appellant the opportunity to present evidence on the merits at the initial hearing.**

Appellant argues that the district court abused its discretion in declining to receive evidence at both the November and December hearings because she is entitled to “provide proof of payment as a defense under [Minn. Stat. §] 504B.291, subd. 1(a).” Appellant also argues that the district court abused its discretion in scheduling both cases for trial without her consent. *See* Minn. Stat. § 504B.341(a) (2022) (providing that a court may grant a continuance of not more than six days unless all parties consent). Respondent argues that the district court was within its discretion to continue the trial and that appellant agreed to the January 30, 2023, trial date.

At the initial court appearance in an eviction case, a tenant “may answer the complaint, and the court shall hear and decide the action, *unless* it grants a continuance of



the trial as provided in section 504B.341.” Minn. Stat. § 504B.335 (2022) (emphasis added).

Although appellant asked the district court for permission to present evidence at both the November and December hearings, she ultimately agreed, on the record, to both the trial dates set by the district court. As such, the district court had discretion to continue the case and was not required to hear evidence prior to the trial. *See id.* The district court, therefore, did not abuse its discretion by continuing the trial.

**III. This court has already concluded that the district court did not abuse its discretion in denying appellant’s motions for a stay pending appeal.**

“Appellate courts generally review a district court’s decision on a motion for a stay pending appeal for an abuse of discretion.” *Cnty. Action P’ship of Scott, Carver & Dakota Cty. v. Britton*, 982 N.W.2d 404, 406 (Minn. App. 2022).

The appropriate way for a party to seek review of a district court’s decision on a stay motion is by motion filed in this court under rule 127 of the Minnesota Rules of Civil Appellate Procedure. Minn. R. Civ. App. P. 108.02, subd. 6 (“On a motion under Rule 127, [we] may review the [district] court’s determinations as to whether a stay is appropriate, the terms of any stay, and the form and amount of security pending appeal.”). Appellant filed such a motion, and this court’s special-term panel determined that the district court did not abuse its discretion in denying a stay pending appeal. *Shannon*, 2023 2662570, at \*2. We will not revisit this ruling. *Cf.* Minn. R. Civ. App. P. 140.01 (“No petition for rehearing shall be allowed in the Court of Appeals.”).

**Affirmed.**